



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

October 9, 2003

Ms. Barbara H. Owens
Assistant General Counsel
Texas Workers' Compensation Commission
4000 South IH-35, MS-4D
Austin, Texas 78704

OR2003-7164

Dear Ms. Owens:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189112.

The Texas Workers' Compensation Commission (the "commission") received a request for the following information:

all suit petitions seeking judicial review of final decisions of the [commission]'s Appeals Panel that have been filed with or submitted to the [c]ommission during the period of June 16, 2003 to July 18, 2003, inclusive, in all lawsuits in which the Plaintiff is a workers' compensation insurance carrier and/or a certified self-insured employer and the Defendant is a workers' compensation claimant [and] copies of all attachments to the suit petitions that were served upon the [c]ommission.

You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code governs a portion of the submitted information. Section 552.022 provides, in relevant part, as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). In this instance, section 552.022(a)(17) makes the submitted court documents public. Therefore, the commission may withhold this information only to the extent it is made confidential under other law. As section 552.101 may except some or all of this information from public disclosure, we will address the applicability of that exception to the information subject to section 552.022 along with your claim for the remaining submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. You contend that the requested information is confidential under section 402.083 of the Labor Code, which provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 10 (1993). We have determined that the claimants' names, identities of family members and beneficiaries, social security numbers, and home telephone numbers and addresses explicitly disclose the identities of the injured employees. *Id.*

We have also determined that whether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis. Open Records Decision No. 619. This office has previously concluded that the legislature, in enacting section 402.083, did not intend to except from disclosure the identities of employers as a matter of law. *Id.* Rather, identities of employers are excepted from disclosure under section 402.083 only when a determination is made, based on the facts of the particular case, that the release of the employer's identity would implicitly disclose the identity of the injured employee. *See id.* This office has further indicated that the determination of whether the release of the employer's identity could implicitly disclose an injured employee's identity can depend on the size of the employer's workforce. *See id.* Another significant factor in this determination is the extent to which the employee's position with the employer is revealed by the information at issue. Thus, what implicitly identifies an employee will depend on the specific facts of each case, and the information will be considered confidential only where those facts are sufficient to demonstrate that the information could implicitly identify an employee. *See generally id.*

Upon review of the submitted information, we conclude that the commission must withhold identifying information such as the injured employees' names, dates of injury, commission claim numbers, social security numbers, home telephone numbers, home addresses, dates of birth, and identities of family members and beneficiaries under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. We have marked a representative sample of the types of information that must be withheld under section 552.101. We note, however, that you have provided our office with no specific factual demonstration that the revelation of the identities of the employers in this instance would implicitly reveal the injured employees at issue. Under the Public Information Act (the "Act"), the commission is required to make a good faith effort to relate a request for information to information in its possession and, unless the information is determined to be excepted from disclosure, provide this information to the requestor within a reasonable amount of time. See Gov't Code § 552.221(a) ("'[P]romptly' means as soon as possible under the circumstances, that is, within a reasonable time, without delay.")¹; Open Records Decision Nos. 664 at 4-5 (2000) (what constitutes "reasonable amount of time" depends on facts of case), 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989); cf. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 686-87 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (the amount of time and money it will take for governmental body to respond to request are not sufficient reasons for failing to produce responsive information). Accordingly, in order to comply with the Act, the commission must determine, within a reasonable amount of time, whether revealing the employers' information will implicitly disclose the identities of the injured employees. To the extent the employer information would implicitly reveal the identity of an injured employee, the commission must withhold the information under section 552.101 of the Government Code and section 402.083 of the Labor Code. Otherwise, the commission must release the employers' information.

Lastly, the submitted information contains bank account numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The commission must, therefore, withhold the types of account numbers that we have marked under section 552.136.

In summary, the commission must withhold the types of information that we have marked under section 552.101 in conjunction with section 402.083 of the Labor Code. Likewise, the commission must withhold the employers' names and addresses under section 552.101 of the Government Code and section 402.083 of the Labor Code to the extent the commission determines this information implicitly reveals the identities of the injured employees. The commission must withhold the types of account numbers that we have marked under section 552.136. The remaining submitted information must be released to the requestor.

¹ Act of May 16, 2003, 78th Leg., R.S., ch. 791, § 1, Vernon's 2003 Sess. Law Serv. 2341 (amending Gov't Code § 552.221(a)).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 189112

Enc. Submitted documents

c: Mr. Jeff Boggess
5421 Hanging Cliff Cove
Austin, Texas 79758
(w/o enclosures)